

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2015

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.5764 of 2007

M.K.Rajendran

...Petitioner

-Vs-

1.Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 009.

2.Inspector General of Police,
Law and Order,
Chennai-600 004.

3.Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-620 001.

4.Superintendent of Police,
District Police Office,
Tiruchirappalli-620 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned order of dismissal from service passed by the fourth respondent herein in his proceedings in P.R.21/01/97, u/r.3(b) dated 31.10.1997 and confirmed by the third respondent herein in his proceedings C.No.B1/Appeal.6/98 dated 27.01.1998 and further confirmed by the second respondent herein in his proceedings Rc.No.AP.III(2)-149782/99 dated 12.08.1999 and further confirmed by the first respondent herein in his order G.O.(D).No.1012-Home (Pol.VI) Department dated 7.11.2000 served on him on 10.12.2001 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential monetary and service benefits.

For Petitioner : M/s.G.Bala and N.Daisy

For Respondents: Mr.V.Subbiah
Special Government Pleader

O R D E R

The petitioner was appointed as Grade-II Police Constable on 17.01.1986 and disciplinary proceedings was initiated against him with regard to alleged reprehensible conduct in having developed relationship with one criminal and after enquiry, he was dismissed from service. The petitioner preferred an appeal to the Director General of Police and he was reinstated in service on 23.04.1996. The petitioner, on joining duty, was assigned with security duty at Bharat Heavy Electricals Limited [BHEL], Trichy Unit and without getting any prior permission, he unauthorizedly absented himself on conclusion of duty on 27.04.1996. Since the petitioner continued to remain absent for 21 days, a charge memo was issued by the fourth respondent stating that the petitioner has unauthorizedly absented himself between 27.04.1996 and 18.05.1996 and from the date of serving of desertion order, he should have reported back for duty within 2 months thereafter and since he did not do so, he is liable to be proceeded departmentally and he was called upon to submit his explanation within 7 days from the date of receipt of the charge memo. The petitioner submitted his explanation to the Deputy Superintendent of Police (Armed Reserve Force) stating that since he was suffering "Hydrocele", he felt embarrassed to disclose the fact and after curing of illness, has appeared before the fourth respondent and also requested him to take back him into service after conclusion of the enquiry. The petitioner also pleaded his family circumstances and prayed for his reinstatement. The fourth respondent, not being satisfied with the explanation offered by the petitioner, has appointed an enquiry officer and during the course of enquiry, two witnesses were examined and the petitioner did not cross-examine him and also not examined any witness on his side, but reiterated his stand that he was suffering due to "Hydrocele" and feeling embarrassed, he did not report for duty.

2. The Disciplinary Authority, namely the fourth respondent, on going through the Enquiry Report found that procedural formalities have been correctly followed and since the delinquency committed by the petitioner/delinquent is fairly serious, concurred with the findings rendered by the Enquiry Officer and therefore, vide order dated 31.10.1997, has awarded the punishment of dismissal from service. The petitioner, aggrieved by the order of dismissal from service passed by the Disciplinary Authority, preferred an appeal to the third respondent, who, vide order dated 27.01.1998, has dismissed the appeal and the petitioner filed a review petition before the second respondent, who has also concurred with the findings of the Disciplinary Authority as well as the Appellate Authority and challenging the legality of the same, has filed this writ petition.

3. The learned counsel appearing for the petitioner would submit that even for the sake of arguments that the petitioner has remained unauthorizedly absent, the punishment of dismissal from service is

highly disproportionate and would further add that the principles of natural justice have not been followed while conducting enquiry and prays for setting aside the order of dismissal from service with a consequential direction to reinstate the petitioner into service and conferment of consequential benefits.

4. Per contra, Mr.V.Subbiah, learned Special Government Pleader, appearing on behalf of the respondents, has drawn the attention of this Court to the counter affidavit filed by the respondents and would submit that initially the petitioner was dismissed from service on 12.12.1996 and on appeal, he was reinstated into service and within four days thereafter, he has unauthorizedly absented himself and on previous occasions, he has unauthorizedly absented himself for 15 times and taking into consideration of these aspects, all the authorities formed an opinion that the order of dismissal from service is the fit and proper punishment to be imposed on the petitioner and accordingly, the petitioner was dismissed from service and hence, prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. It is pertinent to point out at this juncture that the petitioner was dismissed from service on 12.02.1996 for having developed close acquaintance with one criminal and on appeal, his case was sympathetically considered by the first respondent, who ordered reinstatement into service, vide order dated 23.04.1996 and on reinstatement, reported to duty and he was assigned with security duty at BHEL on 23.04.1996 and after completion of duty for four days i.e, 27.04.1996, he did not report for duty till 18.05.1996 and in this regard, he was served with a desertion order on 22.05.1996 and he was under obligation to report to duty within two months from the date of receipt of the said order, but he did not report to duty. The fourth respondent has issued a charge memo dated 05.02.1997, framing the charges and called upon the petitioner to offer his explanation within 7 days from the receipt of the notice, however the petitioner did not submit his written explanation and only on 09.05.1997, offered his explanation stating that since he was suffering due to "Hydrocele" and feeling embarrassed to disclose the said fact, he did not report for duty and when he met the fourth respondent, he promised him to take the petitioner back to service after the conclusion of the enquiry.

7. The fourth respondent, not satisfied with the explanation offered by the petitioner, ordered for enquiry and during enquiry, two witnesses were examined, but the petitioner did not cross-examine him and not examined any witness on his side. The Enquiry Officer, on going through the materials placed before him, reached the conclusion that the charges framed against the petitioner have been proved and the fourth respondent/Disciplinary Authority, on going through the materials, has concurred with the views of the

Disciplinary Authority and passed the order of dismissal of service. The petitioner preferred an appeal to the third respondent, who, on an independent application of mind, has concurred with the views of the Disciplinary Authority and the review petition filed by the petitioner, has also met with the same result.

8. It is well settled position of law that scope of interference by this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, is very limited and unless the petitioner points out that the findings rendered by the Enquiry Officer, are based on no evidence or perverse, it cannot be interfered with. The petitioner did not cross-examine the witnesses and also not examined any witness on his side. As rightly pointed out by the learned Special Government Pleader, mercy was shown to the petitioner by the first respondent and he was reinstated into service on 23.04.1996 and within four days, he has absented himself unauthorizedly and the counter affidavit of the respondents would also disclose that the petitioner was an habitual deserter and earned 16 defaults, out of which 15 relates to unauthorized absence. It is pertinent to point out at this juncture that the petitioner is a member of a disciplined force and he is bound to adhere to the traditions of the said force, but unfortunately, he has unauthorizedly absented himself on very many occasions.

9. This Court, on an independent application of mind to the entire materials placed, is of the view that there is no error or infirmity in the conclusion reached by the Disciplinary Authority, as confirmed by the Appellate Authority as well as the Reviewing Authority and finds no merit in this writ petition.

10. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jvm

To

1. Secretary to Government,
Home Department,
Fort St. George,
Chennai-600 009.

2. Inspector General of Police,
Law and Order, Chennai-600 004.

3. Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli-620 001.

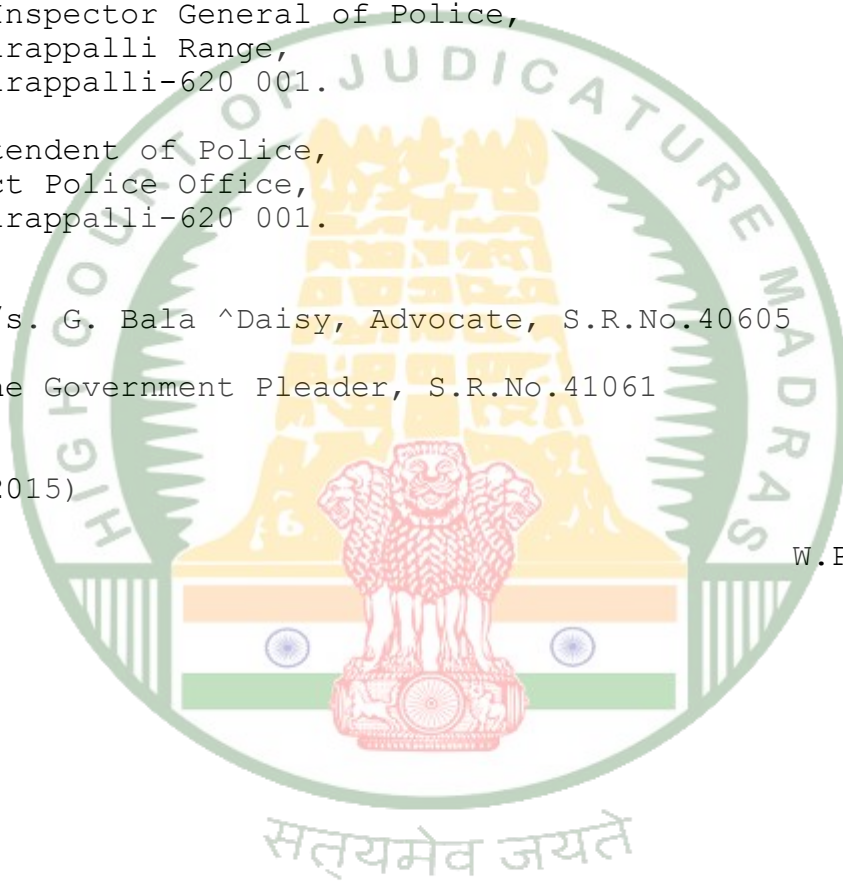
4. Superintendent of Police,
District Police Office,
Tiruchirappalli-620 001.

+1cc to M/s. G. Bala ^Daisy, Advocate, S.R.No.40605

+1cc to the Government Pleader, S.R.No.41061

BVR(CO)
EU(21/08/2015)

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